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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,610	11/07/2000	Christopher M. Hofmeister	118-P-005	9906

7590 12/21/2006
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/707,610

Applicant(s)

HOFMEISTER ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/28/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30 is/are allowed.
- 6) ☐ Claim(s) 1-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>8/23/06</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-13 and 15-19 have been considered and are not persuasive.

Applicant argues Kavarizadeh et al. does not teach a transmitter that would send wetness measurement data. However, Kavarizadeh teaches his invention provides a garment wetness detecting device for detecting the presence of a garment wetness condition and transmitting that condition automatically to a remotely located attendant (col. 3, line 65 through col. 4, line 2).

2. Applicant further argues Fisher does not pertain to a wireless wetness monitoring system using a radio frequency as required in amended claim 1, this feature is addressed by newly cited Mahgerefteh et al. USPN 5570082. Applicant argues Fisher does not pertain to a data collector that transmits wetness measurement data to a control station and that Fisher does not pertain to a control station having a predetermined wetness value that is compared to wetness measurement data to determine if wetness has occurred. The examiner has relied on Fisher for a teaching of a data collection device, which Kavarizadeh does not teach. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined

teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kavarizadeh et al. USPN 5903222 in view of Fisher et al. USPN 5557263 and further in view of Mahgerefteh et al. USPN 5570082.

As to claims 1 and 11, Kawarizadeh discloses a wetness monitoring system 10, 20, 40, comprising a sensor, conductors, absorbent material 18 extending between the conductors, a data collector comprising a compiling processor 92, electric circuit 14, 24, communication device 89, and power source (col. 9, lines 2-24). The system further comprises a control station having a receiver 89, control processor 82, and an associated memory containing a predetermined wetness value (col. 6, line 8 through col. 7, line 27). Kawarizadeh discloses the sensor is to be used with a diaper worn by the individual (col. 3, lines 39-42). Kawarizadeh does not disclose a data collector.

Fisher discloses a wetness detection device having a data collector 178, 183 for the benefits of providing the means to assemble and calculate statistical data for correlation with outer data concerning individual patients or groups of patients. Fisher teaches for example medical histories of patients may be stored in a database for retrieval to evaluate patient progress and efficiency of patient care (Fisher col. 9, lines 60-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Kawarizadeh with a data collection device for the benefits taught in Fisher.

Kawarizadeh/Fisher do not teach a radio frequency communication device. Mahgerefteh et al. USPN 5570082 teaches a remote wetness sensor having a radio frequency device that provides a cost effect sensor in the form of an implant, which is small enough to not be uncomfortable to the infant and provides interference, which is detected by an external receiver to alert the caretaker of a wetness condition.

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Mahgerefteh teaches the radio frequency is under the range of Am radio and avoids interference from radio stations. The detector is only responsive to the predetermined signal (col. 1, line 36 through col. 2, line 26). One having ordinary skill in the art at the time the invention was made would have been motivated by the teaching of Mahgerefteh to provide the invention of Kawarizdeh/Fisher with a radio frequency transmitter for the benefits Mahgerefteh teaches.

As to claims 2-10 and 12, the limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 13, see col. 3, lines 60-65, Kawarizadeh.

As to claim 15, see col. 3, lines 60-65, Kawarizadeh, where the sensor is removed and attached to another dry garment. Thus, the sensor inherently has a fastener to enable it to be attached to the garment.

As to claim 16, see col. 5, lines 45-60, Kawarizadeh.

As to claims 17 and 18, see Figures 1 and 2, Kawarizadeh.

As to claim 19, see col. 13, lines 9-16, Kawarizadeh.

Allowable Subject Matter

5. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 20-30 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The overall claimed combination of a method of detecting wetness comprising the steps of using a sensor to detect wetness values, collecting data from the sensor, periodically generating and transmitting wetness measurement data, comparing the data with a predetermined value, in combination with the claimed apparatus is neither anticipated nor rendered obvious by the prior art of record.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

November 13, 2006